
Growing Up Surplus to Humanity

Aboriginal Children in the Northern Territory

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Introduction

In the Northern Territory (NT), all children in youth detention are Aboriginal and their numbers have been steadily growing over the past decade.² This article examines the transcripts of the Royal Commission into the Protection and Detention of Children in the Northern Territory (2016–17) (hereafter the Royal Commission) to uncover processes and discourses of exclusion of Aboriginal children who have been rendered by the state surplus to humanity. It draws attention to the state's practices in youth detention and the justifications of guards and detention managers before the Royal Commission as premised on notions of Aboriginal children's disorder and deviance. This characterisation, and the ensuing harmful state practices, have taken on a new intensity since the federal government introduced racially discriminatory policies and prac-

1 The author would like to thank Ellen O'Brien for her valuable suggestions and edits, and the feedback from the anonymous referees.

2 H. McDonald, 'Data Reveals 100 Percent of Youth Detained in NT Were Aboriginal', *ABC Radio National*, 27 June 2018, <<http://www.abc.net.au/radionational/programs/breakfast/data-reveals-100-percent-of-youth-detained-in-nt-were-aboriginal/9913822>>, accessed 27 June 2018.

tices in 2007 in order to restrict the rights of Aboriginal people living in remote NT communities and town camps.

In applying the concept of 'surplus humanity' — the theme of this special issue — to the issue of Aboriginal exclusion through youth detention, this article looks through and beyond Zygmunt Bauman's analytic lens. In his seminal 1997 contribution to *Arena Journal*, Bauman elucidated shifts in states' and the ruling class's management of the poor. He outlined the 'charitable' treatment of the poor in 'pre-Modern Europe' that was predicated on the redemption of both the poor and the propertied, and traced how that approach was eschewed with the onset of industrialisation in favour of handling the poor as putative workers to meet the labour shortage.³ Under this new approach, the state sought to mobilise the 'idle' poor into the industrial workforce by depriving them 'of any other source of livelihood'.⁴ In the post-industrial era, which has seen the diminution of requirements for labour, the 'new poor' have been rendered surplus to modern economic requirements and excluded from society.⁵ To morally justify this exclusion, government policy and popular opinion cast the poor as abnormal, deviant and disorderly.⁶

This article employs Bauman's term 'new poor' in the broad sense to include oppressed, dispossessed and ultimately forsaken people and not merely people who are economically disadvantaged. It relies on the following themes in Bauman's contribution: (i) the 'new poor' are rendered a dispensable population — 'a nuisance'⁷ — because they are deemed surplus to private economic interests and hence surplus to humanity; (ii) the designated place of the 'new poor' is 'out of sight' and they are accordingly removed to spaces of 'physical isolation' and 'moral separation';⁸ (iii) within these spaces the forsaken are, first, subject to *inhumane practices*, and second, *denied basic services* and rights for their advancement; (iv) the harm inflicted on the forsaken arises because they are 'banish[ed] from the community of humans and from the world of ethical duty';⁹ (v) even the most extreme harm inflicted on the

3 Z. Bauman, 'The Work Ethic and Prospects for the New Poor', *Arena Journal*, no. 9, pp. 62–3.

4 Bauman, 'The Work Ethic', p. 63.

5 Bauman, 'The Work Ethic', pp. 57, 66. Bauman expounded a similar position in *Wasted Lives: Modernity and Its Outcasts*, Cambridge, UK, Polity, 2004.

6 Bauman, 'The Work Ethic', p. 63.

7 Bauman, 'The Work Ethic', p. 57.

8 Bauman, 'The Work Ethic', p. 69.

9 Bauman, 'The Work Ethic', p. 70.

foresaken is regarded as *normal* and *necessary* conduct to maintain the social order; and (vi) the characterisation of the foresaken as abnormal, disorderly and deviant — by virtue of who they are rather than what they have done¹⁰ — enables torture to be presented not only as necessary but as a 'moral duty'.¹¹

Over twenty years since his article was published, Bauman's observations of the 'new poor' resonate with the restrictive, controlling and punitive regimes imposed on the marginalised and 'othered'.¹² While there have since been various attempts to analyse and explicate patterns in government ideologies, policies and practices towards the marginalised, Bauman continues to provide a significant contribution to conceptualising interrelationships between ideologies and practices and their shifting tendencies. Bauman's perspective is Eurocentric, and his theory of exclusion therefore does not fully capture the various forms of marginalisation experienced by indigenous populations, especially those relating to cultural exclusion. Nonetheless, his rubric is useful in explicating shifts in the state's management and exclusion of the marginalised, including Aboriginal children and their families in the Northern Territory.¹³ Bauman's analytic coalesces with the viewpoints of the many Aboriginal witnesses to the Royal Commission who maintained that acts of exclusion in the state's incarceration, segregation and torture of Aboriginal children are intrinsically linked to moral ideologies of disordered and dysfunctional Aboriginal children and families.

The final sections of this article argue that Bauman's foreboding that the 'new poor' are destined for 'extinction'¹⁴ does not account for Aboriginal people's resilience and the history of settler-colonial dynamics. First, it does not recognise that there is nothing new about these forms of treatment as they are applied to Aboriginal people. Across Australia, as well as other settler colonies, Aboriginal people have long been subject to the colonial myth of extinction and accordingly have been segregated on missions, reserves and settlements where they have experienced abuse and exploitation. Second, Bauman's analysis does not capture the

10 Bauman, 'The Work Ethic', p. 60.

11 Bauman, 'The Work Ethic', p. 67.

12 E. Said, *Orientalism: Western Conceptions of the Orient*, Harmondsworth, Penguin, 1978.

13 The word 'Aboriginal' is used to refer to Indigenous people in the Northern Territory, primarily because this is how they refer to themselves. 'Indigenous' is used in more general contexts.

14 Bauman, 'The Work Ethic', p. 59.

strong capacity of Aboriginal people to create cultures and social orders of inclusion that militate against the state's attempts to exclude them. The concluding sections of this article therefore highlight the evidence presented to the Royal Commission that suggests that Aboriginal societies in the Northern Territory play a critical role in caring for their children and providing them with a place of belonging.

The Royal Commission into Youth Detention

On 25 July 2016 the Australian Broadcasting Corporation televised 'Australia's Shame' on *Four Corners*. This program aired footage of Aboriginal children being beaten in youth detention, sprayed with toxic tear gas, caged in isolated cells, hooded, and shackled by the wrists, ankles and hips to mechanical restraint chairs. Nationally and internationally, this footage was received with shock and condemnation. Comparisons were made with torture in US prisons at Abu Ghraib and Guantánamo Bay.¹⁵ The first response by the federal government was to call a Royal Commission into the practices in NT youth detention and its adjunct system, child protection. The government stated that it regarded these practices as representing an extraordinary deviation from normal, humane practices in and of detention.

Approximately 5500 pages of transcripts from the Royal Commission hearings between October 2016 and June 2017 elucidate the systemic disregard for the humanity of Aboriginal children in detention. The Royal Commission's *Final Report* opened with the proclamation that there were 'systemic and shocking failures' of the detention and child-protection systems in the Northern Territory: 'Children and young people have been subjected to regular, repeated and distressing mistreatment'.¹⁶ The evidence by corrections ministers, managers, detention officers (hereafter officers) and ancillary workers reveals a mentality of cruel indifference to Aboriginal children's humanity. They charac-

15 See, for example, H. Davidson, P. Karp and E. Hunt, "'Abu Ghraib'—Style Images of Children in Detention in Australia Trigger Public Inquiry", *The Guardian*, 26 July 2016, <<https://www.theguardian.com/australia-news/2016/jul/26/abu-ghraib-images-children-detention-australia-public-inquiry>>, accessed 22 December 2017.

16 Royal Commission into the Protection and Detention of Children in the Northern Territory (Royal Commission), *Final Report*, vol. 1, Canberra, Commonwealth of Australia, 2017, <<https://issuu.com/ntroyalcommission/docs/1-final?e=31933818/55836140>>, accessed 22 December 2017, p. 9.

terised children as a threat to the order and management of detention centres, and to society at large. This manifests in what we might call, after Foucault, a *governmentality of violence and degradation* in detention,¹⁷ a lack of support services and negligible attention to children's strengths.

The federal government professed shock that officers inflicted inhumane practices on Aboriginal children in detention. Yet this concealed its own agency in the harm administered to Aboriginal children. The federal government has been complicit in both the mentality and governmentality of exclusion and cruelty towards Aboriginal children in the Northern Territory. A brief analysis below of the federal government's discriminatory policies towards Aboriginal people under the *Northern Territory National Emergency Response Act 2007* (Cth) and related measures (hereafter referred to by its common name, the Intervention)¹⁸ sheds light on how the treatment of Aboriginal people as surplus to humanity has thrived since 2007, and enabled torture in youth detention. The Intervention comprises a set of racially discriminatory policies and practices that aim to 'normalise' and 'stabilise' Aboriginal communities under the guise of protecting Aboriginal children from abuse in their communities.¹⁹ The Intervention's strategies have included unleashing the army on Central Australian Aboriginal communities to reinstate 'order'; denying social-security payments to Aboriginal families who do not comply with state requirements (leading to malnourishment of children and their failure to thrive); and pushing Aboriginal people off their land or otherwise forcing them to lease land by denying them access to basic services.²⁰

Under the Intervention, rates of Aboriginal children in the youth-justice and child-protection systems have experienced unprecedented increases, with a doubling of incarceration rates

17 M. Foucault, 'Governmentality', *Ideology and Consciousness*, vol. 6, 1979, p. 13.

18 The Intervention was enacted under the *Northern Territory National Emergency Response Act 2007* (Cth). It required the suspension of the *Racial Discrimination Act 1975* (Cth). Its current legislative form is *Stronger Futures in the Northern Territory Act 2012* (Cth).

19 M. Brough, Commonwealth of Australia Parliamentary Debates, House of Representatives, 7 August 2007, <http://parlinfo.aph.gov.au/parlInfo/download/chamber/hansardr/2007-08-07/toc_pdf/5592-5.pdf>, p. 7; M. Brough, 'National Emergency Response to Protect Aboriginal Children in the NT', *Australian Government Department of Social Services*, 21 June 2007, <https://formerministers.dss.gov.au/3581/emergency_21june07/>, accessed 22 December 2017. See also A. Stafford, 'Child Sex Abuse Rife, Says Brough', *The Age*, 1 June 2007, <<http://www.theage.com.au/news/national/child-sex-abuse-rife-says-brough/2007/05/31/1180205427804.html>>, accessed 22 December 2017.

20 See broadly J. Altman and M. Hinkson (eds), *Coercive Reconciliation: Stabilise, Normalise, Exit Aboriginal Australia*, Melbourne, Arena, 2007.

since 2007.²¹ Currently *all* children in NT detention are Aboriginal and they are entering detention at younger ages.²² These children have been caught up in the Intervention's policing and law-and-order strategies, which target low-level offences (such as minor property crimes, driving offences and breaches of orders).²³ For instance, traffic and vehicle convictions for young people, such as driving unregistered vehicles or driving without a licence, have increased by 100 per cent since 2007.²⁴ This is a result of the Intervention reforms that expanded criminal laws and police powers exclusively in Aboriginal communities, and the surge in the number of police in Aboriginal communities, including the deployment of federal police.²⁵ Aboriginal people complained that the new police were 'heavy-handed with children' when investigating a crime.²⁶ Another trigger for the increase in incarceration rates has been the escalation in Aboriginal child-protection orders and removals of Aboriginal children from their families since the Intervention.²⁷ Children in state care are heavily policed, the Royal Commission heard.²⁸ The majority of Aboriginal children in detention are also in the child-care and child-protection system.²⁹ These discriminatory Intervention reforms and practices are the same ones that were supposed to protect Aboriginal children.

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- 21 Northern Territory Department of Correctional Services, *Annual Statistics 2014–2015*, Darwin, Northern Territory Government, <https://justice.nt.gov.au/__data/assets/pdf_file/0009/269793/2014-15-NTDCS-Annual-Statistics.pdf>, accessed 22 December 2017, p. 8; T. Anthony, 'Governing Crime in the Intervention', *Law in Context*, vol. 27, no. 2, 2010; Royal Commission, *Interim Report*, 31 March 2017, Canberra, Commonwealth of Australia, <<https://childdetentionnt.royalcommission.gov.au/about-us/Documents/RCNT-Interim-report.pdf>>, accessed 22 December 2017, p. 12; M. Mitchell, 'Public Hearing Transcript', *Royal Commission into the Protection and Detention of Children in the Northern Territory: Transcripts*, 22 October 2016, <<https://childdetentionnt.royalcommission.gov.au/NT-public-hearings/Pages/Transcripts.aspx>>, accessed 22 December 2017, p. 38; O. Havnen, 'Public Hearing Transcript', *Royal Commission: Transcripts*, 21 March 2017, p. 1591.
- 22 McDonald, '100 Percent of Youth'; Australian Institute of Health and Welfare, 'Youth Justice in Australia 2015–16', *Bulletin* 139, Canberra, 2017, <<http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129559053>>, accessed 22 December 2017, p. 10. Dylan Voller, for instance, was eleven years old when he was first sent to youth detention.
- 23 Royal Commission, *Interim Report*, p. 12; Mitchell, 'Transcript', 22 October 2016, p. 38; Havnen, 'Transcript', p. 1591; Anthony, 'Governing Crime in the Intervention', pp. 90–113.
- 24 T. Anthony, 'Why Are So Many Indigenous Kids in Detention in the NT in the First Place?', *The Conversation*, 4 August 2016, <<https://theconversation.com/why-are-so-many-indigenous-kids-in-detention-in-the-nt-in-the-first-place-63257>>, accessed 24 May 2018.
- 25 Anthony, 'Why Are So Many Indigenous Kids in Detention?'.
- 26 J. Pilkington, *Aboriginal Communities and the Police's Taskforce Themis: Case Studies in Remote Aboriginal Community Policing in the Northern Territory*, Darwin, North Australian Aboriginal Justice Agency, 2009, <<http://www.naaja.org.au/wp-content/uploads/2014/05/Final-Report-Pilkington-THEMIS-Stations.pdf>>, accessed 24 May 2018, p. 128.
- 27 Anthony, 'Why Are So Many Indigenous Kids in Detention?'.
- 28 I. Lea, 'Public Hearing Transcript', *Royal Commission: Transcripts*, 10 May 2017, p. 3683.
- 29 Anthony, 'Why Are So Many Indigenous Kids in Detention?'.

However, the terms of reference of the Royal Commission do not refer to the racial dynamic of detention centres: that it is Aboriginal children in detention centres who are being harmed by non-Aboriginal state officers. The terms of reference direct the Commission to inquire into the failings of the Northern Territory's youth-detention and child-protection systems; the treatment of detained children; whether such treatment breached Commonwealth, NT or international laws; whether appropriate oversight procedures and safeguards were in place; and what measures would be required to prevent inappropriate treatment of children in detention.³⁰ There is no mention of the failings of the state in relation to Aboriginal children. The generality of the terms of reference whitewashes the exclusion and cruelty towards *Aboriginal* children. Racial ideologies in the Northern Territory have been a defining feature of how the state has sought to control Aboriginal people, including Aboriginal children in detention and welfare institutions. The state's mistreatment and cruel disregard of Aboriginal children in detention cannot be understood apart from these racial ideologies. The rhetoric of the Intervention placed the issue of the abuse of *Aboriginal* children front and centre because it enabled the blaming of Aboriginal people and communities for that abuse *and* the portrayal of the state as Aboriginal children's benevolent saviour. Since the Royal Commission is concerned with the abuses of Aboriginal children by the state and its agencies, the terms of reference operate to conceal the racial dynamics, which would implicate the state and highlight its repeated failure as 'protector'.

Under the NT Intervention, Aboriginal children have been exposed to unprecedented levels of incarceration and state violence in detention. The Royal Commission was told that, under the Intervention, the state had facilitated the intensification of a thug culture in detention, and that this had been sanctioned at the highest levels of government.³¹ The administration of tear gas in the various units of the Don Dale Youth Detention Centre was authorised by senior corrections executives and endorsed by Attorney-General and Minister for Correctional Services John Elferink.³² As minister for

30 Commonwealth of Australia, 'Letters Patent and Terms of Reference', *Royal Commission*, 1 August 2016, <<https://childdetentionnt.royalcommission.gov.au/about-us/Documents/Letters-Patent-child-detention-NT.pdf>>, accessed 22 December 2017.

31 K. Middlebrook, 'Public Hearing Transcript', *Royal Commission: Transcripts*, 26 April 2017, p. 2795.

32 S. Cohen, 'Public Hearing Transcript', *Royal Commission: Transcripts*, 30 March 2017, p. 2386.

justice and minister for correctional services, Elferink introduced legislation that allowed a child to be lawfully shackled to a mechanical restraint chair or strapped into a hood covering his or her entire head.³³ The torture of Aboriginal children in detention centres is akin to Bauman's conceptualisation of the excluded being subjected to a 'a special regime' of subordination.³⁴ These zones of exclusion and exceptionalism allow the control of those seen as falling outside social norms. This same exceptionalism has applied to Aboriginal communities whose human rights have been restricted under the Intervention more generally, as was identified by Indigenous witnesses before the Royal Commission.³⁵

The Royal Commission's focus on the *excesses* of violence in detention is characteristic of the role of commissions of inquiry intended to repair a crisis of legitimacy and reinstate the state's image of administrative rationality.³⁶ As such, according to Scraton, commissions tend to operate within 'approved discourses of the state'.³⁷ The Royal Commission under examination here is no exception. Pervading the hearings of the Royal Commission were accounts of ministers, managers and guards seeking to rationalise the violence. They shed light on the state's discourses on the torture and mistreatment of children as reasonable, necessary and even ethical. Aboriginal children are consistently depicted as a threat to the order of society, and in this respect surplus to the needs of a civilised humanity. In this sense, the transcripts expose the mentalities of government, which will be examined at length in the latter part of this article.

By contrast, the voices of young people affected by torture in detention reveal the governmentality of the violence, indignity and humiliation inflicted on them. However, they rarely gave evidence in public following the aggressive examinations of some young people by the lawyers for the NT government. The following dis-

33 The administration of these forms of torture was explicitly permitted in law by the insertion of Section 151AB into the *Youth Justice Act* (NT) in 2016.

34 Bauman, 'The Work Ethic', p. 59.

35 P. A. Anderson, 'Public Hearing Transcript', *Royal Commission: Transcripts*, 12 October 2016, p. 149; L. Behrendt, 'Public Hearing Transcript', *Royal Commission: Transcripts*, 29 May 2017, p. 3996–9. Under the Intervention, Indigenous people are refused the same rights as all other Australians to, *inter alia*, social-security income, alcohol purchases, and procedural fairness in sentencing and bail hearings, and are subject to intense scrutiny by government officials.

36 F. Burton and P. Carlen, *Official Discourse: On Discourse Analysis*, Government Publications, *Ideology and the State*, London, Routledge & Kegan Paul, 1979, p. 51.

37 P. Scraton, 'From Deceit to Disclosure: The Politics of Official Inquiries', in G. Gilligan and J. Pratt (eds), *Crime, Truth and Justice: Official Inquiry, Discourse, Knowledge*, Cullompton, Willan, 2004, p. 49.

cussion points to the rich archive provided by young people's testimony of their experiences of suffering at the hands of guards and managers. The Royal Commission has documented not only their suffering as victims but also their strengths and their informed understanding of the reforms required to address the problems within the system.

Abuse of Aboriginal Children in Youth Detention

The Royal Commission's proceedings heard Aboriginal children's experiences of tear gassing, restraint chairs, shackling, hooding, being punched and hit with instruments, having heads smashed into concrete floors, choking and death threats — all administered by guards in youth detention.³⁸ The national children's commissioner, Megan Mitchell, stated that force was 'routinely used' in detention.³⁹ Detention-centre managers and officers taunted Aboriginal children with racist and sexist slurs. They called them 'stupid black cunts', 'camp dogs', 'oxygen thieves', 'waste[s] of space', 'little black poofters', and 'fucking sluts'.⁴⁰ They ridiculed Aboriginal children for not speaking 'proper' English, and deliberately withheld hearing aids from children with hearing impairments.⁴¹

Evidence of other acts of humiliation included guards watching and filming children in the shower and on the toilet (and uploading footage to social media),⁴² forcibly stripping children with knives (including while male guards were pushing down on young

38 J. Turner, 'Public Hearing Transcript', *Royal Commission: Transcripts*, 13 March 2017, p. 923; B. Y., 'Public Hearing Transcript', *Royal Commission: Transcripts*, 16 March 2017, p. 1204; A. U., 'Closed Court Transcript', *Royal Commission*, 23 March 2017, p. 8; D. Voller, 'Public Hearing Transcript', *Royal Commission: Transcripts*, 20 April 2017, p. 2666; R. K. Hamburger, 'Public Hearing Transcript', *Royal Commission: Transcripts*, 6 December 2016, p. 384; K. Engels, 'Public Hearing Transcript', *Royal Commission: Transcripts*, 9 May 2017, p. 3578; B. Kelleher, 'Public Hearing Transcript', *Royal Commission: Transcripts*, 21 March 2017, p. 1573; K. Middlebrook, 'Public Hearing Transcript', *Royal Commission: Transcripts*, 28 April 2017, p. 3365.

39 M. Mitchell, 'Public Hearing Transcript', *Royal Commission: Transcripts*, 11 October 2016, p. 29.

40 J. Fattore, 'Public Hearing Transcript', *Royal Commission: Transcripts*, 14 March 2017, p. 1000; C. L. Zamolo, 'Public Hearing Transcript', *Royal Commission: Transcripts*, 20 March 2017, p. 1396; Kelleher, 'Transcript', 21 March 2017, p. 1547; E. Tobin, 'Public Hearing Transcript', *Royal Commission: Transcripts*, 24 March 2017, pp. 1782–3.

41 D. Voller, 'Public Hearing Transcript', *Royal Commission: Transcripts*, 12 December 2016, p. 714; J. A. Barney, 'Public Hearing Transcript', *Royal Commission: Transcripts*, 13 October 2016, p. 262.

42 Zamolo, 'Transcript', pp. 1411–2; Voller, 'Transcript', 12 December 2016, p. 684; Zamolo, 'Transcript', pp. 1406–7.

Aboriginal girls);⁴³ and pat searching their naked bodies.⁴⁴ Guards told children to ‘suck my dick’ while they were in bed, and to eat ‘bird poo’.⁴⁵ These ‘completely barbaric’ acts were ‘designed to clearly humiliate a child’, according to evidence given by Olga Havnen, Western Arrernte descendant and chairperson of Danila Dilba Health Service.⁴⁶ One young Aboriginal girl stated that she had endured physical and sexual violence by guards that made her feel like she had lost her youth.⁴⁷ The inhumane treatment incited suicidal tendencies among a number of the young people in detention.

The youth detention facilities were consistently described as oppressive in the proceedings. The Darwin youth detention centre — Don Dale — was described as a ‘shit hole’.⁴⁸ Don Dale is an unreconstructed men’s prison that was regarded by Corrections Commissioner Ken Middlebrook as ‘only fit for a bulldozer’ when it closed to adult prisoners.⁴⁹ It comprises a series of concrete cells for girls and boys. At the time, it lacked air conditioning, fans and basic hygiene such as running water in cells.⁵⁰ Keith Hamburger, who conducted a review of the centre in 2016, described it as a guarded ‘human storage facility’.⁵¹ The other youth detention centre in the Northern Territory, Aranda House (now Alice Springs Youth Detention Centre), was ‘more like a maximum security prison than a juvenile detention centre’, according to one former detainee.⁵² Another young person, Jamal Turner, referred to it as a ‘miserable place’ with no natural light because the windows had been paint-ed over: it was ‘like being stuck in a box’.⁵³ Its ‘dungeon-like’ environment had no airflow from the outside or toilets in the

43 This was officially referred to as a ‘Hoffman knife’ technique in line with at-risk procedure. Hamburger, ‘Transcript’, 6 December 2016, p. 407.

44 Voller, ‘Transcript’, 12 December 2016, pp. 684–5.

45 Zamolo, ‘Transcript’, p. 1447; J. Hunyor, ‘Public Hearing Transcript’, *Royal Commission: Transcripts*, 20 March 2017, p. 1494; Zamolo, ‘Transcript’, p. 1403.

46 Havnen, ‘Transcript’, p. 1595.

47 A. N., ‘Statement of A. N.’, *Royal Commission into the Protection and Detention of Children in the Northern Territory: Exhibits*, 24 March 2017, <<https://childdetentionnt.royalcommission.gov.au/NT-public-hearings/Documents/evidence-2017/evidence24march/Exh-159-001.pdf>>, p. 17.

48 Kelleher, ‘Transcript’, 21 March 2017, p. 1543.

49 Middlebrook, ‘Transcript’, 28 April 2017, p. 3314.

50 Kelleher, ‘Transcript’, 21 March 2017, p. 1558; A. D., ‘Public Hearing Transcript’, *Royal Commission: Transcripts*, 9 December 2016, p. 628.

51 R. K. Hamburger, ‘Public Hearing Transcript’, *Royal Commission: Transcripts*, 5 December 2016, p. 315.

52 J. Turner, ‘Statement of Jamal Turner’, *Royal Commission: Exhibits*, 13 March 2017, <<https://childdetentionnt.royalcommission.gov.au/NT-public-hearings/Documents/evidence-2017/evidence13march/Exh-065-001.pdf>>, p. 3.

53 Turner, ‘Statement’, p. 3.

cells.⁵⁴ Both centres lacked evacuation procedures and fire drills, despite significant fire hazards.⁵⁵

Shackling and hooding

The torture of children was depicted in the now infamous image of Dylan Voller hooded and strapped into a mechanical restraint chair. This was one of the numerous occasions on which Voller had been restrained in the chair. He detailed to the Royal Commission his anxiety with being unable to move or breathe properly for two hours. He felt dizzy and ill, which resulted in his vomiting in his mouth and having panic attacks. The guards ignored Voller's requests to loosen the tight wrist restraints. His shame was intensified when he was forced to urinate on the chair after he was denied access to the toilet. He was taunted and laughed at by the several officers in the room. He described to the Royal Commission his feeling that there was 'no responsible person' that could have made the call to get me 'out of that restraint chair' when it had been 'too long'.⁵⁶ This lack of human compassion and ethical duty on the part of the officers accords with Bauman's illustration of how society has banished outsiders 'from the universe of moral empathy'.⁵⁷

Isolation from humanity

Isolation in segregated cells is akin to Bauman's conception of complete, dehumanising control of the excluded.⁵⁸ The segregated cells, where young people would be housed for twenty-three hours per day, were filthy and dark, and they reeked of sewage.⁵⁹ On a visit to Don Dale's Behavioural Management Unit (BMU), the North

54 C. M. Castle, 'Public Hearing Transcript', *Royal Commission: Transcripts*, 16 March 2017, p. 1291; Voller, 'Transcript', 12 December 2016, pp. 681, 691, 707; Hamburger, 'Transcript', 6 December 2016, pp. 406–7; Turner, 'Statement', p. 3.

55 L. J. M. De Souza, 'Public Hearing Transcript', *Royal Commission: Transcripts*, 22 March 2017, pp. 1636–7; R. S. Caldwell, 'Public Hearing Transcript', *Royal Commission: Transcripts*, 29 March 2017, p. 2098; A. G. Giles, 'Public Hearing Transcript', *Royal Commission: Transcripts*, 28 April 2017, p. 3246.

56 Voller, 'Transcript', 12 December 2016, pp. 710–2.

57 Bauman, 'The Work Ethic', p. 70.

58 Bauman, 'The Work Ethic', pp. 69–70.

59 A. D. was only allowed out of his cell for half an hour to take a shower and make a phone call (A. D., 'Transcript', p. 615). De Souza, 'Transcript', pp. 1678–9; Kelleher, 'Transcript', 21 March 2017, p. 1545; Hunyor, 'Transcript', p. 1487; S. Cohen, 'Public Hearing Transcript', *Royal Commission: Transcripts*, 24 April 2017, pp. 2808–9; Voller, 'Transcript', 12 December 2016, p. 680; J. Sizeland, 'Public Hearing Transcript', *Royal Commission: Transcripts*, 27 March 2017, p. 1921.

Australian Aboriginal Justice Agency (NAAJA) delegation was 'shocked' to find children in these decrepit cells.⁶⁰ Children were reduced to 'bare life'⁶¹: they were made to beg for food and water, forced to defecate in pillow slips, and denied human contact, education and recreation.⁶² Children were subjected to acts of torture, such as in Alice Springs, where officers created freezing conditions for prolonged periods that made children's skin go all 'wrinkly', and deprived children of sleep by flickering bright lights on and off.⁶³

Children in isolation were made to feel like 'caged animals' without rights or humanity.⁶⁴ Young people conveyed to the Royal Commission that being isolated in high-security cells for several weeks made them feel like a 'dog' or a 'rabbit in a cage'.⁶⁵ Images of gouges in the walls of segregation cells were produced as evidence of the 'horrific' conditions in which children, having nothing to do for long periods of time, would use implements to pick at the walls or bang their heads against the walls.⁶⁶ In 2000, fifteen-year-old Johnno Wurrumbarrba died in an isolation cell in Don Dale, at a time when witnesses before the Royal Commission were working at the centre.⁶⁷ Rather than reflecting on the hazards of confinement, Trevor Hansen, a supervisor in detention, stated that Wurrumbarrba's suicide made you 'realise what these kids were capable of'.⁶⁸

Children's trauma was compounded by the indefinite length of the segregation.⁶⁹ Despite their ongoing requests for information

60 Hunyor, 'Transcript', p. 1487.

61 See G. Agamben, *Homo Sacer: Sovereign Power and Bare Life*, trans. D. Heller-Roazen, Stanford, Stanford University Press, 1998.

62 C. M. Gwynne, 'Public Hearing Transcript', *Royal Commission: Transcripts*, 12 October 2016, p. 140; Voller, 'Transcript', 12 December 2016, pp. 681–2, 691–3; Hamburger, 'Transcript', 6 December 2016, pp. 406–8.

63 Voller, 'Transcript', 12 December 2016, p. 695.

64 Mitchell, 'Transcript', 11 October 2016, p. 29.

65 This was communicated daily by the children in the BMU to the officers. See Kelleher, 'Transcript', 21 March 2017, p. 1557; A. B., 'Statement of A. B.', *Royal Commission: Exhibits*, 23 March 2017, <<https://childdetentionnt.royalcommission.gov.au/NT-public-hearings/Documents/evidence-2017/evidence23march/Exh-139-001.pdf>>, p. 21.

66 Hamburger, 'Transcript', 6 December 2016, pp. 409, 314–5; see also G. Harmer, 'Public Hearing Transcript', *Royal Commission: Transcripts*, 24 March 2017, p. 1778.

67 See *Findings in the Death of Johnno Johnson Wurrumarba* [2001] NTMC 84 (note that Wurrumbarrba is commonly spelt as 'Wurrumbarrba', including throughout the case); T. Hansen, 'Public Hearing Transcript', *Royal Commission: Transcripts*, 14 March 2017, p. 991.

68 Hansen, 'Transcript', 14 March 2017, p. 991.

69 Hamburger, 'Transcript', 6 December 2016, p. 408; De Souza, 'Transcript', p. 1648. However, when youth detention executives sought legal advice from the solicitor for the Northern Territory in early 2014, they were told that the BMU fell under section 153 of the *Youth Justice Act* (NT) and thus 'continual isolation' was in contravention of the Act. This did not, however, change the practice of continual isolation within the BMU. See A. Nobbs-Carcuro, 'Public Hearing Transcript', *Royal Commission: Transcripts*, 12 May 2017, p. 3944.

on when they would be released into the general population, they were not given any time frame. In fact, often there were no plans for their release.⁷⁰ The corrections commissioner instead approved rolling plans to continue isolation in order to maintain the 'good order and security of the prisoner, prison and staff'.⁷¹ One child stayed in solitary confinement for thirty-nine days; another, A. D., was there for seventeen days at the age of fourteen, with no sunlight, exercise or human contact.⁷² He continually asked when he would be let out.⁷³ At no time was he told why he was placed there, on what grounds he would be allowed to leave, or when he could leave. The only way for the children to contact the guards was via a buzzer, which often went unanswered.⁷⁴ Children would be left screaming for a glass of water, to use the bathroom, to receive help, or simply for human contact.⁷⁵ Their exclusion is reminiscent of Bauman's purported circumstances of the 'new poor': not only removed to 'faraway prisons' that are 'out of sight' but confined so completely that 'no one, even the prison guards, is likely to meet them face-to-face'.⁷⁶

Tear gassing

After seventeen days in isolation, fourteen-year-old A. D. decided that his survival depended on escaping. This incident, on the night of 21 August 2014, set in motion a series of events that would lead to the bombing of the Don Dale BMU with tear gas. When A. D. attempted to escape, he discovered, to his surprise, that his cell door was unlocked.⁷⁷ The unlocked door signifies the officers' sense of their all-encompassing power, in the context of which physical restraints were no longer needed. Nonetheless, A. D.'s escape threatened their power and provoked the mobilisation of the riot squad. Facing this force, A. D. tried to de-escalate matters

70 Zamolo, 'Transcript', p. 1401; Middlebrook, 'Transcript', 26 April 2017, p. 2999. The plans only stipulated what they could or could not eat, how long the child was allowed out of his or her room and what behaviour was required. See Kelleher, 'Transcript', 21 March 2017, p. 1540.

71 Middlebrook, 'Transcript', 26 April 2017, pp. 2987, 2999; Hunyor, 'Transcript', p. 1518.

72 P. Boulton, 'Public Hearing Transcript', *Royal Commission: Transcripts*, 27 April 2017, p. 3155; J. Sizeland, 'Public Hearing Transcript', *Royal Commission: Transcripts*, 28 March 2017, p. 1992.

73 A. D., 'Transcript', pp. 616, 629; Zamolo, 'Transcript', pp. 1426, 1417–8.

74 A. D., 'Transcript', pp. 629, 615; Voller, 'Transcript', 12 December 2016, p. 681.

75 Voller, 'Transcript', 12 December 2016, p. 680; Caldwell, 'Transcript', p. 2123.

76 Bauman, 'The Work Ethic', pp. 69–70.

77 A. D., 'Transcript', p. 616.

by asking the guards to 'talk it out'. He declared, 'I give up'.⁷⁸ The reply was that it was 'too late' and he would be pulverised.⁷⁹

Armed officers and the riot squad proceeded to fire CS tear gas, a prohibited agent under the *International Convention on Chemical Weapons*, throughout the segregation unit.⁸⁰ The gassing affected all of the six children in the BMU. One of the young people, A. B., who was playing cards at the time, recalled that the guards threw something like a 'bomb' into the isolation unit that 'exploded'.⁸¹ Despite A. B.'s running to the other side of the cell and covering himself with the sheet and mattress, he was 'affected immediately'.⁸² As with the others, A. B. felt his eyes and throat burning, found it hard to breathe, and developed a crushing headache.⁸³ Dylan Voller, who was locked in his cell at the time of the gassing, said he felt like he 'was going to die'.⁸⁴ A. B. said that the boys 'started shaking each other's hands and saying our goodbyes'.⁸⁵

After the gassing, the six boys were 'decontaminated' with a fire hose, although their clothes were not replaced for several days. They were hooded and shackled on their wrists and ankles and forcibly marshalled ('like chickens') to vans that transferred them to the maximum-security unit of the adult prison.⁸⁶ When asked why they were being shackled, a guard told them to 'shut the fuck up'.⁸⁷ For A. B., the gassing resulted in ongoing health problems and self-harm. He subsequently jumped off a roof because he was 'angry at Ken Middlebrook about the tear gassing' and he 'felt like no one was listening to me'.⁸⁸ He told the Royal Commission that being tear gassed 'was the worst thing that happened' and he still feels 'really betrayed and let down by it'.⁸⁹

78 A. D., 'Transcript', pp. 629, 618–9.

79 Kelleher, 'Transcript', 21 March 2017, pp. 1565–6; Zamolo, 'Transcript', p. 1430.

80 Kelleher, 'Transcript', 21 March 2017, p. 1566.

81 A. B., 'Statement', p. 23.

82 A. B., 'Statement', p. 23.

83 A. B., 'Statement', p. 23. See also A. D., 'Transcript', p. 619; D. Voller, 'Statement of Dylan Voller', *Royal Commission: Exhibits*, 13 December 2016, <<https://childdetentionnt.royalcommission.gov.au/NT-public-hearings/Documents/evidence-2016/evidence13december/Exh-051-001.pdf>>, p. 42.

84 Voller, 'Transcript', 12 December 2016, p. 708.

85 A. B., 'Statement', p. 23.

86 A. D., 'Transcript', p. 623; A. B., 'Statement', pp. 24–5.

87 A. B., 'Statement', p. 24.

88 A. B., 'Statement', p. 26.

89 A. B., 'Statement', p. 2.

Exclusion from Services

Aboriginal children are not only forcefully and coercively dealt with in detention but also denied rights to advance their lives because they are regarded as hopeless. As Bauman argues in relation to the new poor, which is also relevant for young detainees, they are perceived as lacking a role in society and hence the state relieves itself of its duty to provide for them.⁹⁰ In relation to Aboriginal children in NT detention, responsible ministers, managers and staff conveyed a view that the children lacked the capacity to contribute to the economy and society. Accordingly, resources were not invested in harnessing Aboriginal children's strengths to realise their potential. Strategies of confinement and physical restraints were given precedence over rehabilitation.⁹¹

The Royal Commission heard that overall there were insufficient opportunities for children to engage in education, training and appropriate programs in detention.⁹² This resulted in children being in a 'state of torment' because they were left in their cells with nothing to do.⁹³ The situation was worse for children in isolation cells, where the meagre programs and support available to the general cohort were withheld.⁹⁴ This is akin to the governance of the new poor: their lives do not count, so their potential is unworthy of investment. Because they are considered surplus to requirements, the new poor are 'an unjustifiable waste of taxpayers' money'.⁹⁵

Young people in detention gave evidence that they wanted job training and skills to enable them to work when they were released. But, as one young detainee stated, '[t]here's no chance to get that experience here'.⁹⁶ Dylan Voller gave evidence that in detention there was no preparation for life 'on the outside'. He was unable to get assistance to obtain a 'white card' to work in construction. His request to sit for his Year 10 exams while in detention was answered by officers throwing a 'few maths sheets' into his cell.⁹⁷

⁹⁰ Bauman, 'The Work Ethic', p. 67.

⁹¹ Royal Commission, *Interim Report*, p. 3.

⁹² C. M. Gwynne, 'Public Hearing Transcript', *Royal Commission: Transcripts*, 11 October 2016, p. 52.

⁹³ T. Byrnes, 'Public Hearing Transcript', *Royal Commission: Transcripts*, 20 March 2017, p. 1491.

⁹⁴ D. J. Tasker, 'Public Hearing Transcript', *Royal Commission: Transcripts*, 15 March 2017, p. 1070.

⁹⁵ Bauman, 'The Work Ethic', p. 67.

⁹⁶ Quoted in Royal Commission, *Final Report*, vol. 1, p. 108.

⁹⁷ Voller, 'Transcript', 12 December 2016, pp. 700, 687.

The Royal Commission heard that teachers, principals, case workers and nurses in detention failed to adequately support the children's learning, training and rehabilitation.⁹⁸ The principal of Tivendale School in Don Dale, Lisa Coon, for instance, told the Royal Commission that she 'wiped her hands' of children who were in isolation.⁹⁹

Within Tivendale School, teachers did not identify the aptitude of students and taught to the lowest common denominator. A. D., who, since being released, has progressed to senior high school, stated that the education in detention was 'too easy', 'wasn't like normal school' and did not advance his learning.¹⁰⁰ The NT children's commissioner, Colleen Gwynne, said the children would 'crave' more education in detention, and she received numerous 'complaints from young people about the inadequate level of education'.¹⁰¹ Through Bauman's analytic lens, this failure to provide adequate education, and the lack of belief in children's prospects, reflects the designation of children as outside of a 'useful' humanity.¹⁰²

The Tivendale principal, along with the teachers, regarded their primary role as one of managing behaviours rather than addressing educational needs. The children were prohibited from speaking in Aboriginal language because it was seen as a threat to the order and control of the classroom.¹⁰³ They were punished for perceived misbehaviour, such as checking Facebook, through lengthy suspensions from school and denial of educational support in their cells.¹⁰⁴ The school was also involved in decisions to place at-risk children into segregation units.¹⁰⁵

In terms of the healthcare provided to detained children, the Royal Commission received evidence of inadequate health screenings, including a lack of comprehensive checks that covered hear-

98 M. Vita, 'Review of the Northern Territory Youth Detention System Report (2015)', *Royal Commission*, 12 May 2017, <<https://childdetentionnt.royalcommission.gov.au/NT-public-hearings/Documents/evidence-2017/evidence12may/Exh-437-002-Part-1.pdf>>, p. 28; Kelleher, 'Transcript', 21 March 2017, p. 1540; Nobbs-Carcuro, 'Transcript', p. 3965.

99 L. Coon, 'Public Hearing Transcript', *Royal Commission: Transcripts*, 21 April 2017, pp. 2722, 2729.

100 A. D., 'Transcript', pp. 626, 612.

101 Gwynne, 'Transcript', 12 October 2016, p. 140.

102 Bauman, 'The Work Ethic', p. 67.

103 Coon, 'Transcript', pp. 2725–6. Also see comments by former Tivendale teacher B. McNair, 'Public Hearing Transcript', *Royal Commission: Transcripts*, 16 March 2017, p. 1254.

104 Byrnes, 'Transcript', p. 1492; Gwynne, 'Transcript', 12 October 2016, p. 140; Coon, 'Transcript', p. 2739.

105 Coon, 'Transcript', p. 2722.

ing loss, psychiatric issues or foetal alcohol spectrum disorder (FASD), and a lack of requisite treatment.¹⁰⁶ Medical staff conveyed that their priority was to work 'within the constraints of a detention centre' that paid primary attention to 'safety and security' rather than the children's underlying health conditions.¹⁰⁷ On occasion, untreated injuries or mental-health issues were allowed to escalate to the extent that children required hospitalisation.¹⁰⁸ Some nursing staff failed to attend to children who were injured by detention staff.¹⁰⁹ At times, nurses were openly abusive towards children, such as when a nurse spoke to the children in a 'hateful' way because 'she just had such disdain' for them.¹¹⁰ Havnen pointed to an absence of therapy for children with mental-health and trauma-related needs in detention.¹¹¹ Instead, the manifestation of mental-health issues would result in the child being put in an isolation cell.¹¹²

The cultural needs of children in detention were neglected. Instead, officers sought to diminish children's connections to culture, community and country by forbidding children to speak in their own language;¹¹³ refusing requests to attend parents' funerals and sorry business;¹¹⁴ cutting off phone contact and visits with family as punishment;¹¹⁵ telling children that their family did not care about them; and transferring children from Alice Springs to Darwin's Don Dale detention centre, thousands of kilometres away, to further isolate them from family and community.¹¹⁶ The children's commissioner highlighted the importance of children maintaining relationships with their families for building 'communities that care for their kids' and to ensure that children returned to their community 'after their involvement in a detention setting'.¹¹⁷ Instead, guards did not exhibit moral empathy for children's need to build relations with their family, community and culture, because they ceased to see Aboriginal children as part of the human order.

106 Havnen, 'Transcript', p. 1597; C. M. Connors, 'Public Hearing Transcript', *Royal Commission: Transcripts*, 16 March 2017, pp. 1271–3.

107 Connors, 'Transcript', p. 1285.

108 A. B., 'Statement', p. 12.

109 B. Clee, 'Public Hearing Transcript', *Royal Commission: Transcripts*, 20 April 2017, p. 2591.

110 S. Muller, 'Public Hearing Transcript', *Royal Commission: Transcripts*, 24 March 2017, p. 1782.

111 Havnen, 'Transcript', p. 1598.

112 A. N., 'Statement', p. 14; Voller, 'Statement', p. 21.

113 Tasker, 'Transcript', 15 March 2017, p. 1113.

114 I. K. Johns, 'Public Hearing Transcript', *Royal Commission: Transcripts*, 28 March 2017, p. 2039; Zamolo, 'Transcript', p. 1403.

115 Gwynne, 'Transcript', 11 October 2016, pp. 55–6.

116 Voller, 'Transcript', 12 December 2016, pp. 688–9.

117 Gwynne, 'Transcript', 11 October 2016, p. 56.

Upholding the State's Order

Inhumane conditions and extreme violence towards children went unnoticed by those running NT detention centres, and were even regarded as aspects of the job. Managers saw the maltreatment of children as a normal way of conducting business.¹¹⁸ In their eyes, the proper order and operation of detention centres, which was focused on compliance with procedure and policy and maximising efficiencies in a resource-poor environment, legitimised the acts of cruelty that occurred within the centres by both themselves and their staff. Before the Royal Commission, managers and guards relied on operational rationales to appear reasonable in the performance of their roles. They referred to the children's deviance to justify their own conduct, which they considered not only superior but law-abiding. This was consistent with the 'us and them' mentality they employed in the running of centres, which sought to make the child appear abnormal in order to make torture of them seem normal. This strikes a chord with Bauman's reflection that the imposition of a norm 'privileges certain kinds of conduct as normal, while casting all other kinds as abnormal'. It tells us what it means to behave in an orderly society. The final part of this section considers how the 'concepts of order and norm' serve those in control in NT detention centres, even when they are acting in the most arbitrary and violent manner.¹¹⁹

Evidence produced by NT detention officers and managers illustrates their desensitisation to the inhumane conditions already outlined. They explained the detention centres with cold and professional distance. When former superintendent Russell Caldwell was asked to describe the cells in detention, he referred to them as 'austere' and lacking modern architecture.¹²⁰ This highly understated description was received with astonishment by the commissioners who had seen the filth and decrepitude of Don Dale firsthand. In similarly benign terms, the corrections commissioner said the centres were like 'any old police lockup' and suggested that the isolation cells were not in need of urgent attention,¹²¹ while the chief minister of the Northern Territory, Adam Giles, said the centres simply required 'refurbishment'.¹²² Officials conveyed an

118 Mitchell, 'Transcript', 11 October 2016, p. 29.

119 Bauman, 'The Work Ethic', pp. 58–9.

120 Caldwell, 'Transcript', p. 2166.

121 Middlebrook, 'Transcript', 26 April 2017, p. 3007; Hunyor, 'Transcript', p. 1490.

122 Giles, 'Transcript', p. 3275.

attitude that the state of the centre was acceptable and reasonable within the professional expectations for detention centres.

Violent and abusive conduct on the part of guards was condoned inside detention centres. Officers openly admitted that they would not have acted the way they acted inside the centre on the outside because it would have been seen as harmful and inappropriate. Demonstrating their belief that abusing children and using racist language was legitimate conduct in their work, officers referred to such behaviour as 'fairly common'.¹²³ Two officers, Ben Kelleher and Conan Zamolo, who were found by the Commission to have abused and acted indecently towards children, regarded their behaviour as harmless and 'playful'.¹²⁴ Telling children to 'suck my dick' was seen as 'mucking around' by the officers.¹²⁵ This was reinforced in police investigations into the abuse. Police refrained from pressing charges when guards hit children, on the basis that it was 'just a game'.¹²⁶ This resonates with Bauman's observation that secluded people are subject to a 'special regime' that sanctions extraordinary violence.¹²⁷

The infliction of violence was seen by detention officers as maintaining the good order of detention centres and therefore as 'doing one's job'. A supervisor of the Alice Springs Youth Detention Centre, Derek Tasker, responded to a proposition that one of his staff was violent with the claim, 'I always found him to do his job'. Tasker naturalises the violence in detention as necessary to get the work done, with no regard for the harm inflicted on the child.¹²⁸ Similarly, the corrections minister, John Elferink, told the Royal Commission that as long as officers who were using force 'were on the right side of gross negligence or criminality', they should be supported to do their job. In his opinion, officers should be able to do their work 'without the fear of constantly being overseen and reprimanded'.¹²⁹

Guards' training sent the message that physical and 'defensive'

123 Zamolo, 'Transcript', p. 1397.

124 Royal Commission, 'Findings and Recommendations', *Final Report*, <<https://childdetentionnt.royalcommission.gov.au/Documents/Royal-Commission-NT-Findings-and-Recommendations.pdf>>, accessed 22 December 2017, p. 4; Royal Commission, *Final Report*, vol. 2B, <<https://childdetentionnt.royalcommission.gov.au/Documents/Royal-Commission-NT-Final-Report-Volume-2B.pdf>>, accessed 22 December 2017, p. 47; Zamolo, 'Transcript', p. 1397.

125 B. Kelleher, 'Public Hearing Transcript', *Royal Commission: Transcripts*, 19 April 2017, pp. 2489–90; Zamolo, 'Transcript', p. 1415.

126 Engels, 'Transcript', pp. 3577–80.

127 Bauman, 'The Work Ethic', p. 59.

128 Tasker, 'Transcript', 15 March 2017, pp. 1106–15.

129 J. W. Elferink, 'Public Hearing Transcript', *Royal Commission: Transcripts*, 27 April 2017, pp. 3094–6.

techniques were necessary for carrying out one's job.¹³⁰ Their core training course was the Professional Assault Response Training (PART) program, which was encapsulated by one guard in the following terms: 'Grab the kid's arm here and he will comply'.¹³¹ Training for cell insertions and extractions involved holding shorts or bra straps with a 'slight upward control' to maximise the restriction, an action well-known as a 'wedgie'.¹³² This indecent force was described by one Aboriginal girl as a 'shame job'.¹³³ Detention supervisor Hansen nonetheless explained it as standard, professional procedure.¹³⁴ It was pursued, along with other acts such as the forcible stripping of girls, because it was sanctioned in the workplace. Hansen claimed that he would have stopped if he had been asked to, but he proceeded because he was trained to carry out this procedure (long after the training had been discontinued in the centre) and no one in authority questioned it.¹³⁵ To use Bauman's phrase, doing one's job was presented as an 'excuse for violent misanthropy'.¹³⁶

Similarly, questioning of detention executives concerning the infamous mechanical restraint chair elicited responses that its use was consistent with guards' powers under the legislation.¹³⁷ The corrections commissioner interpreted the *Youth Justice Act 2005* (NT) broadly to allow its use. However, when the executive director of Northern Territory Youth Justice, Salli Cohen, conveyed concerns with this interpretation, the NT parliament inserted section 151AB into the Act to allow 'business as usual' to be resumed in relation to the use of the chair, along with the hooding of children.¹³⁸ Executives expressed their confidence to the Royal Commission that the chair was compliant under the old and new legislative provisions, which meant that it was seen as not only legal but necessary to manage disorderly children.¹³⁹

130 T. Hansen, 'Public Hearing Transcript', *Royal Commission: Transcripts*, 13 March 2017, p. 951.

131 Kelleher, 'Transcript', 21 March 2017, p. 1539.

132 Hansen, 'Transcript', 13 March 2017, pp. 950, 961, 968, 982–3; Turner, 'Transcript', p. 944.

133 P. J. Callaghan, 'Public Hearing Transcript', *Royal Commission: Transcripts*, 13 March 2017, p. 969, quoting A. N.

134 Hansen, 'Transcript', 13 March 2017, pp. 954–7, 970–1; Fattore, 'Transcript', pp. 1006–7.

135 T. Hansen, 'Public Hearing Transcript', *Royal Commission: Transcripts*, 19 April 2017, p. 2498.

136 Bauman, 'The Work Ethic', p. 58.

137 Elferink, 'Transcript', 27 April 2017, p. 3199.

138 J. E. Kerr, 'Public Hearing Transcript', *Royal Commission: Transcripts*, 8 December 2016, p. 482.

139 Middlebrook, 'Transcript', 26 April 2017, p. 3034. Explicit legalisation became grounds for managers' confidence in the chair's legitimate use. Limitations on the use of restraints were also relaxed, such that their use no longer required an emergency but merely a 'valid reason', including to 'discipline, manage or control' a child, which encompassed protecting children from themselves or otherwise forcing them to 'settle down' so order could be restored. See Kerr, 'Transcript', pp. 482–3; Elferink, 'Transcript', 27 April 2017, p. 3199; Middlebrook, 'Transcript', 26 April 2017, p. 3027.

Another aspect of the job was working in a context of limited resources, which managers saw as justifying harmful practices over humanitarian ones. Operational issues explicated the lack of capacity to care for children. The efficient running of the detention centres informed decisions to employ the tactical response team; place children in isolation cells; disregard children's well-being and calls for help; co-locate girls with boys; and transport children from Alice Springs to Don Dale detention centre or to an adult prison. Inadequate staffing and resources, including working within 'old inappropriate infrastructure',¹⁴⁰ were seen as providing the basis for inhumane treatment. Former executive director of corrections Amanda Nobbs-Carcuro said that she used the riot squad to manage self-harming children rather than therapeutic approaches because 'we didn't have the staffing or the resources' to address the welfare needs of children. The lack of operational guidelines was also conceived as grounds for using force and the restraint chair instead of responding to the concerns of children.¹⁴¹

Finally, managers normalised their conduct by adopting an 'us and them' mindset. The deputy general manager of Don Dale, James Sizeland, who was responsible for much of the torture documented on the *Four Corners* program, and who fostered a 'thug culture' among staff, conceded that this mindset was prevalent among managers.¹⁴² When asked how he would feel if he were an abused child in detention, he denied that there was a 'comparison between my childhood and the activities of these — these boys'.¹⁴³ Corrections Commissioner Middlebrook also demonstrated racism and a lack of empathy when he stated that Aboriginal kids grow up with different expectations in order to explain away the impact of detention.¹⁴⁴ Managers invoked an 'us and them' discourse to demarcate the moral humanity of whiteness from the immoral otherness of Aboriginal children. This can be likened to Bauman's view that those who apportion 'punishment' regard themselves as

140 M. Yaxley, 'Public Hearing Transcript', *Royal Commission: Transcripts*, 30 March 2017, p. 2298. See also Middlebrook, 'Transcript', 28 April 2017, p. 3006.

141 Nobbs-Carcuro, 'Transcript', pp. 3962–5.

142 Sizeland employed officers who were referred to as 'muscle men' due to their buff appearance and reputation as professional prize fighters and steroid-taking bodybuilders. Collectively, these officers were known as 'Jimmy's boys', 'Don Dale Turtles' and 'the muscle group'. They were described by numerous witnesses as cultivating a culture of violence, in which Sizeland was complicit if not active. See Johns, 'Transcript', p. 2031; Zamolo, 'Transcript', pp. 1436, 1399; Kelleher, 'Transcript', 21 March 2017, pp. 1552, 1554; De Souza, 'Transcript', p. 1647; Sizeland, 'Transcript', 28 March 2017, p. 1993.

143 Sizeland, 'Transcript', 27 March 2017, p. 1923.

144 Middlebrook, 'Transcript', 26 April 2017, p. 2960.

‘defenders of law and order’ and guardians of decency, and cease to consider those at the ‘receiving end of force’ because they are not ‘people like them’.¹⁴⁵ Aboriginal children in detention can be considered such people: they are set up to fail not because they breach orders but because they are not like ‘us’.

Such demarcations emerged explicitly on the evening of 21 August 2014, when management decided to gas six children, most of whom were passive, in Don Dale’s BMU. Middlebrook stated that the decision, which he ultimately endorsed, was made by ‘senior staff on executive salaries’.¹⁴⁶ Middlebrook’s mention of the monetary worth of these staff serves as a proxy for their competence and made them worthy of Middlebrook’s trust. The children, by contrast, were described by the corrections minister, Elferink, as ‘the worst of the worst’.¹⁴⁷ Executive director Cohen, who was present during the gassing, referred to it as ‘surreal’ and ‘beyond any stretch of the imagination’. She likened it to ‘being inside a video game’.¹⁴⁸ Cohen refused to see the children’s humanity beyond pawns in a game. She was in fact one of the executives who professed to be against the use of gas, yet she failed to come to the boys’ aid during or after the gassing.¹⁴⁹ This is the ‘deafening silence’ that Bauman explains as emanating from ‘people who thought themselves to be decent and ethical creatures’. They see ‘no reason why the victims of violence, who had long ago ceased to be counted among the members of the human family, should be targets for their moral compassion’.¹⁵⁰

Moral Justifications for Inhumane Conduct

During the Royal Commission’s proceedings, detention guards and managers explained the cruelty they inflicted on children with reference to the children’s disorderly, deviant and abnormal behaviours, including self-harm, which threatened the order of the detention centre. By blaming the victim, authorities not only were blind to the harm experienced by children, as outlined above, but also they saw their use of force as righteous and humane. Guards

145 Bauman, ‘The Work Ethic’, p. 60, emphasis in original.

146 Middlebrook, ‘Transcript’, 26 April 2017, p. 3008.

147 Elferink, ‘Transcript’, 27 April 2017, p. 3139.

148 Cohen, ‘Transcript’, 30 March 2017, p. 2387.

149 Cohen, ‘Transcript’, 30 March 2017, p. 2386. Cohen did not ensure that the children received health checks following the incident (see p. 2387).

150 Bauman, ‘The Work Ethic’, p. 70.

and their managers saw their role as upholding the moral order and minimising risks to social norms. Detained Aboriginal children were excluded from this order because of perceptions of their deviance and the threat they presented to order, even when this had no foundation.¹⁵¹ This resonates with Bauman's observation that the notion of order 'offers an excuse' for 'whatever actions' maintain it, and that it is ultimately intent on separation and exclusion, including within the confines of prison. 'Deviance' or 'deviation' from order are grounds for excision and expurgation. Upholding order against disorderly children permeates moral justifications of indefinite segregation, tear gassing, assaults and the use of restraints in the Northern Territory. Bauman states that casting the forsaken as abnormal is 'not simply an exercise in house-cleaning but an ethical act'.¹⁵²

Nowhere is the will to exclude and excise greater than in the practice of segregating children in detention. The nomenclature of the BMU denotes the need to manage the child's behaviour. Detention managers and guards repeatedly told the Royal Commission that BMU placements were warranted to bring out-of-control or abnormal behaviours under control.¹⁵³ Behaviours that were deemed problematic included non-compliance, threats to lodge a complaint against officers, sadness following a mother's death, and self-harm.¹⁵⁴ Isolation did not necessarily require proof of actual misbehaviour but merely perceived risk of deviance. Thirteen-year-old A. N., who exhibited 'abnormal' behaviours (including mental-health issues), was placed in the BMU 'to try and control her behaviour', even though she was not actually attempting suicide or acting out.¹⁵⁵ Another child was placed in the BMU within minutes of being told of the death of his mother because of the anticipated adverse behaviours flowing from his trauma.¹⁵⁶ Guards even admitted that keeping children in isolation was used as a 'power trip', or simply as a matter of procedural convenience.¹⁵⁷

151 Middlebrook, 'Transcript', 28 April 2017, pp. 3358, 3391.

152 Bauman, 'The Work Ethic', pp. 58–60.

153 Caldwell, 'Transcript', p. 2123.

154 A. D., 'Transcript', p. 611; B. F., 'Closed Court Transcript', *Royal Commission: Transcripts*, 13 March 2017, p. 11; Voller, 'Statement', p. 33; Havnen, 'Transcript', p. 1595; Hunyor, 'Transcript', p. 1518.

155 Yaxley, 'Transcript', pp. 2279–80.

156 B. F., 'Transcript', p. 11.

157 Kelleher, 'Transcript', 21 March 2017, pp. 1542–3; Zamolo, 'Transcript', p. 1396. The latter included instances in which a standard cell was not available, or for risk-assessment purposes. See A. D., 'Transcript', p. 611; B. F., 'Transcript', p. 11; Voller, 'Statement', p. 33; Havnen, 'Transcript', p. 1595; Hunyor, 'Transcript', p. 1518.

The main reason cited for segregating children was 'disorder'. Corrections Commissioner Middlebrook described the children in the BMU as 'hoodlums' who had been 'intimidating officers' and who contributed to a 'crisis' in detention.¹⁵⁸ When Middlebrook was asked about the nature of the children in the BMU, he could not identify their specific behaviours, characteristics or ages.¹⁵⁹ Corrections ministers referred to the children's bad behaviour and the need for 'risk management'.¹⁶⁰ In this view, isolation was the 'only real' option for 'high level noncompliance' and deviation from the 'rules and regulations'.¹⁶¹ Nonetheless, Middlebrook moralised the placement of badly behaved children, stating that segregation was akin to containing a 'virus' that would otherwise 'spread to other vulnerable, impressionable young people'.¹⁶²

The justifications offered by detention authorities for tear-gassing six children in the BMU also attempted to moralise these abuses with reference to the children's deviance. Corrections minister Elferink described the gassed children as 'villains' and 'ratbags'.¹⁶³ They were not the kind of children 'that bring home apple pie for their parents'; instead they were 'extremely dangerous', with intolerable behaviour.¹⁶⁴ When questioned by the Royal Commission about these statements, he said that the children's placement in segregation was itself evidence that they were bad children who deserved such maltreatment. This is reminiscent of Bauman's observation that the new poor, once excluded, are subordinated to a 'special regime' under which they are treated without humanity. This regime is seen as self-inflicted by the victims because of their 'wrong actions'.¹⁶⁵ The other hermeneutic

158 Middlebrook, 'Transcript', 28 April 2017, pp. 2959, 3316. See also Zamolo, 'Transcript', p. 1418.

159 Along with the minister, Middlebrook was ignorant of their young ages, their health issues (such as asthma), the fact that most were on remand, and even their actual behaviour, including that they were locked in their cells playing cards or seeking to negotiate with unresponsive managers. See Middlebrook, 'Transcript', 28 April 2017, p. 3008; Elferink, 'Transcript', 27 April 2017, pp. 3141–2. A number of the children in fact had histories of compliance but were placed in the BMU on the basis of association. See Sizeland, 'Transcript', 28 March 2017, p. 1957. Similarly, Dylan Voller was classified as an escape risk although he had never attempted to escape and never had any intention of doing so (Voller, 'Transcript', 12 December 2016, pp. 693–4).

160 Cohen, 'Transcript', 30 March 2017, p. 2389, quoting Elferink; G. F. McCarthy, 'Public Hearing Transcript', *Royal Commission: Transcripts*, 17 March 2017, p. 1377.

161 Sizeland, 'Transcript', 28 March 2017, p. 2010; Hamburger, 'Transcript', 6 December 2016, p. 408.

162 Middlebrook, 'Transcript', 28 April 2017, p. 3349.

163 Elferink, 'Transcript', 27 April 2017, p. 3139.

164 Cohen, 'Transcript', 30 March 2017, p. 2389, quoting Elferink.

165 Bauman, 'The Work Ethic', pp. 59–60.

device that was utilised to condemn the affected children and highlight their serious threat was to designate the children's conduct as 'riotous'.¹⁶⁶ Even though there was no evidence of a 'riot', given that all of the children except one were sitting passively in their cells, the term was used by managers to validate the gassing.¹⁶⁷ The authorities relied on this language to assert that the gassing was a necessary response to bring the situation under control, and to argue that the use of chemical agents was an effective management tool to reinstate order.¹⁶⁸

Finally, the use of force, including male guards forcibly stripping young girls with a Hoffman knife, was explained by guards as necessary to 'protect everybody around you' and maintain 'everybody's safety'.¹⁶⁹ Hitting, choking and smashing children's heads against walls was perceived as 'reasonable and necessary'.¹⁷⁰ For instance, the unprovoked bashing of Dylan Voller that was captured on CCTV footage, and led to a criminal prosecution (although not conviction), was described by the perpetrator, Derek Tasker, as necessary because Voller was a 'spitter'.¹⁷¹ Commissioner Middlebrook commented at the time that spitting required constraints such as the use of safety gowns and force.¹⁷² Rationalising this assault as a matter of hygiene enables, in Bauman's depiction, 'savage impulses and abandonment of scruples' to appear as acts conducted 'out of virtue'. It also enables the violence perpetrated against the victim to appear 'self-imposed'.¹⁷³

So confident were the guards in the righteousness of their use of force that they carried out acts of torture in full view of CCTV cameras. When Dylan Voller was hooded and on the restraint chair,

166 The invocation of riot in discourses about Indigenous people is a settler-colonial trope that justifies punitive interventions into Indigenous lives and spatial control (see T. Anthony, *Indigenous People, Crime and Punishment*, London, Routledge, 2013, pp. 167–9).

167 It emerged in the Royal Commission that Sizeland falsified evidence of the damage being done by the children to support his characterisation of a riot. See Zamolo, 'Transcript', p. 1433; Sizeland, 'Transcript', 27 March 2017, pp. 1902–6.

168 Cohen, 'Transcript', 30 March 2017, p. 2386, citing Middlebrook; Elferink, 'Transcript', 27 April 2017, p. 3139.

169 See A. N., 'Statement', p. 9; Havnen, 'Transcript', p. 1603; Hansen, 'Transcript', 13 March 2017, pp. 969, 971; Fattore, 'Transcript', p. 997.

170 Tasker, 'Transcript', 15 March 2017, p. 1110. See *Police v Tasker* [2014] NTMC 02, para. 72.

171 Tasker, 'Transcript', 15 March 2017, p. 1115. Tasker is currently employed to conduct PART for youth-detention officers in recognition of the system's endorsement of his handling of children. See D. J. Tasker, 'Public Hearing Transcript', *Royal Commission: Transcripts*, 14 March 2017, p. 1046.

172 Quoted in A. Stewart, 'Guards Who Restrained and Stripped Boy in Detention in Alice Springs Backed by NT Corrections Boss', *ABC News*, 19 December 2014, <<http://www.abc.net.au/news/2014-12-18/guards-who-stripped-boy-in-detention-backed-by-nt-prisons-boss/5976986>>, accessed 22 December 2017.

173 Bauman, 'The Work Ethic', pp. 70, 60.

guards made jokes and taunted him while being recorded by both a hand-held camera and CCTV. When A. D. was attempting to escape the BMU on the night of the gassing, a guard said in front of the camera: 'the fucker should come through because when he comes through he'll be off balance and I'll pulverise — I'll pulverise the little fucker. Oh shit, we're recording, hey'.¹⁷⁴ Bauman reminds us that the brutality of those in power can be 'performed constantly in view' because it is performed in the 'name of superior values, with professional competence'.¹⁷⁵ The guards told the Royal Commission that they did not fear any repercussions.¹⁷⁶ Indeed, the relegation of detained Aboriginal children to a lesser status meant their complaints tended not to be pursued by virtually any guards.¹⁷⁷ Rather, the guards acted with impunity and a sense of superior moral duty to exclude the deviant elements within the system.

Alternative Aboriginal Orders

Indigenous witnesses appearing before the Royal Commission presented an alternative perspective that recognised the strengths of Indigenous children, their families and their communities. This muffled the cacophony of non-Indigenous voices before the Royal Commission that sought to problematise Indigenous children. For Aboriginal witnesses from the Northern Territory, the children in detention did not represent a problem but embodied their future generations who would fulfil responsibilities to their communities and cultures. They spoke about the crucial role of self-determination for Aboriginal communities and families to support their children's well-being and shape their world view.¹⁷⁸ They conceived of the problem in terms of the imposed Western order and its

174 Kelleher, 'Transcript', 21 March 2017, p. 1565; Zamolo, 'Transcript', p. 1430.

175 Bauman, 'The Work Ethic', p. 70, quoting commentator on Nazi Germany Alain Finkielkraut.

176 Zamolo, 'Transcript', p. 1415.

177 Kelleher, 'Transcript', 21 March 2017, p. 1546; A. N., 'Closed Court Transcript', *Royal Commission: Transcripts*, 24 March 2017, p. 13. This is epitomised by one incident where children made complaints against an officer who had sexually harassed them. These were completely ignored until another officer was harassed by this same person, following which the children's complaints were immediately investigated to corroborate the officer's claim of harassment. See Fattore, 'Transcript', pp. 997–8.

178 For example, Behrendt, 'Transcript', p. 3996; M. Bamblett, 'Public Hearing Transcript', *Royal Commission: Transcripts*, 12 October 2016, p. 189; Anderson, 'Transcript', p. 156; M. A. Wala Wala, 'Public Hearing Transcript', *Royal Commission: Transcripts*, 20 June 2017, p. 4555; C. Fejo-King, 'Public Hearing Transcript', *Royal Commission: Transcripts*, 21 June 2017, pp. 4663–4; A. M. Jackomos, 'Public Hearing Transcript', *Royal Commission: Transcripts*, 23 June 2017, p. 4878; J. Crawshaw, 'Public Hearing Transcript', *Royal Commission: Transcripts*, 21 June 2017, p. 4683.

practices of segregation, rather than in terms of the behaviours of their children. They pointed to the harm flowing to both Aboriginal children *and* their community when their children were taken away, including a loss of family, 'cultural laws' and songlines.¹⁷⁹ These were powerful counter-narratives to state justifications for excluding and controlling Aboriginal children through violence, restraint and humiliation. They also counter Bauman's assumptions about the omnipresence of state exclusion.

Elder Marius Paruntatameri, a Tiwi man who at the time contributed to the Elders Program in Don Dale, regarded children in detention as 'special kids' who can 'become good leaders regardless of what their situation is'. He conveyed to the Royal Commission his belief that 'all kids are good and can be respectful of culture'. These children, as potential leaders, were seen as not only valuable but necessary for the continued survival of their culture. Paruntatameri said to the Royal Commission that every child is 'a good natured person' who, with guidance, can contribute 'in a positive way to their communities' and 'become role models regardless of their circumstances'. Paruntatameri spoke about young people who returned to his Tiwi community following incarceration and went on to play a positive role in their community.¹⁸⁰

It is not simply, as Paruntatameri's evidence attests, that children are helped by their Aboriginal community but that children are inseparable from their community: 'they are our own people'. The 'ongoing challenges' that children face are common to the challenges that Elders face, particularly in relation to the ongoing removal of Aboriginal rights to language, law and culture, as well as basic human rights. These challenges, Paruntatameri stated, are not insurmountable and can be addressed with the empowerment of Aboriginal communities. He stated that the Elders in his community would 'absolutely' prefer to 'deal with the kids ourselves', because 'we know the answers to our problems of our children, rather than the Correctional Services or the police. If — if I had the power to do it, I would ... my community would deal with the children in our community our way'.¹⁸¹

179 J. Jangala, 'Public Hearing Transcript', *Royal Commission: Transcripts*, 20 June 2017, p. 4548; M. J. Dixon, 'Public Hearing Transcript', *Royal Commission: Transcripts*, 20 June 2017, p. 4550; A. Dowardi, 'Public Hearing Transcript', *Royal Commission: Transcripts*, 20 June 2017, pp. 4543, 4547.

180 M. Puruntatameri, 'Public Hearing Transcript', *Royal Commission: Transcripts*, 31 March 2017, pp. 2403–4.

181 Puruntatameri, 'Transcript', pp. 2404–5.

Bauman's focus on exclusion from a Western order does not account for the plurality of orders in settler-colonial societies. From his European perspective, Bauman observes that segregated people 'cease to exist in the eyes of others'; they lack the support of a 'common cause' and eventually cease to exist 'in their own eyes'.¹⁸² However, the humanity of Aboriginal children in detention is kept alive because of the support of their Aboriginal communities and the strength derived from Aboriginal country and its legal order.¹⁸³ While this is sorely tested for children who are confined in detention, it remains a check on Bauman's foreboding of a doomed existence. Paruntatameri's evidence signals hope that children in detention will go on to fulfil their responsibilities to community, culture and country. Russell Goldflam points out that despite the state's attempts to stifle Aboriginal laws, such as under the Intervention, these laws continue to play a powerful role in Aboriginal children's lives. He states that 'perhaps nobody in this [Royal Commission] ... knows much about Indigenous laws, but for many people growing up in Central Australia they are informed by this law and bound by its rules ... Their law is real to them'.¹⁸⁴ The implications of this strengths-based approach are proposals for empowering Aboriginal communities in relation to the care of their children. Rather than look towards resourcing detention centres or state interventions in Aboriginal communities, the focus of Indigenous witnesses is on supporting the 'strong cultural base here in the Northern Territory', which is Aboriginal children's 'greatest' asset.¹⁸⁵ This involves respecting the cultural roles played by strong family relationships and Elders in Aboriginal children's development.¹⁸⁶ Senior law man of Maningrida Andrew Dowardi spoke about the need for community to guide children with culture and experiences on country, rather than removing them to detention centres.¹⁸⁷ Elders spoke about the need to recognise and support the functions of community-owned programs, services, and law and justice groups, of which many examples were provided, including the Gurrutju Wellbeing program in Maningrida,

182 Bauman, 'The Work Ethic', p. 69, quoting Xavier Emmanuelli.

183 See, for example, A. D., 'Statement', *Royal Commission: Exhibits*, 22 November 2016, p. 6.

184 R. R. Goldflam, 'Public Hearing Transcript', *Royal Commission: Transcripts*, 14 December 2016, pp. 851–2.

185 M. Bamblett, 'Public Hearing Transcript', *Royal Commission: Transcripts*, 13 October 2016, p. 200.

186 Havnen, 'Transcript', p. 1589.

187 Dowardi, 'Transcript', pp. 4557, 4567, 4577. See also Dixon, 'Transcript', p. 4549; Havnen, 'Transcript', p. 1589.

Kurdiji in Lajamanu, Bunuwarra in Maningrida and the Warlpiri Youth Development Aboriginal Corporation and Mt Theo at Yuendumu.¹⁸⁸

Bauman's notion of a 'new order' of exclusion neglects the perseverance of Aboriginal nations, as well as the continuity in the state's exclusion of Aboriginal people in settler-colonial societies. Locking up, segregating and removing children has been a consistent practice since the inception of colonisation and a critical aspect of the takeover of Indigenous lands. Indigenous Australians, like other indigenous peoples, have been incarcerated in church missions, government settlements, cattle stations and prisons under administrative and punitive regimes.¹⁸⁹ The 2007 NT Intervention — which has alienated Aboriginal people from their lands, imposed discriminatory legal regimes and contributed to burgeoning Aboriginal adult and youth imprisonment and child removals from family — is part of the colonial continuum of state sequestration and disempowerment of Aboriginal communities.¹⁹⁰ It has placed immense pressure on Aboriginal people to leave their 'rich culture, land, language and traditions behind' because of the hardship they are made to experience in their own communities.¹⁹¹ The Royal Commission heard that the NT government has been complicit in this process by seeking to outlaw Aboriginal culture and impose its own conception of law and order.¹⁹² The maltreatment of Aboriginal people under the Intervention, and its mirroring practices in youth detention,¹⁹³ does not constitute, as Bauman's schema might suggest, a *new* era of managing the poor. Rather, it is an *intensification* of ongoing state measures. These measures seek to unburden the colonial jurisdiction of legitimate Aboriginal cultures and claims. Alyawarre woman Pat Anderson told the Royal Commission that Aboriginal people are regarded as 'zombies' who are 'shuffling' around the edges of NT society.

188 Wala Wala, 'Transcript', p. 4544; Jangala, 'Transcript', p. 4548; Dixon, 'Transcript', p. 4549; Dowardi, 'Transcript', p. 4543; E. Robertson, 'Public Hearing Transcript', *Royal Commission: Transcripts*, 11 May 2017, pp. 3808–9, 3811.

189 R. Hogg, 'Penalty and Modes of Regulating Indigenous People in Australia', *Punishment and Society*, vol. 3, no. 3, 2001, p. 355.

190 Bamblett, 'Transcript', 13 October 2016, pp. 209, 215; Anderson, 'Transcript', p. 157.

191 Bamblett, 'Transcript', 13 October 2016, p. 199. Evidence before the Royal Commission demonstrates synergies between the prohibitions on culture and languages on the inside of detention and on the outside (in NT schools, for example). See D. Glyde, 'Public Hearing Transcript', *Royal Commission: Transcripts*, 16 March 2017, p. 1254.

192 J. W. Elferink, 'Public Hearing Transcript', *Royal Commission: Transcripts*, 28 June 2017, pp. 5178, 5182–4.

193 Anderson, 'Transcript', p. 168.

However, she stated that this misapprehends that 'Aboriginal people are perfectly qualified and perfectly able to take control, and manage their own affairs'.¹⁹⁴

Conclusion

Bauman warned that by 'putting itself in the question' in its constant quest for self-improvement, the West discovers that 'the foundations of all our arrangements are arbitrary'.¹⁹⁵ This is what the Royal Commission has done in exposing the absence of rules, procedures, rights and protections, or their inconsistent application, in detention, in the findings of its *Final Report*.¹⁹⁶ Bauman also elucidates how the self-questioning of the system serves to provide order to the chaos. It pins a logic to its failings (not enough resources, inappropriate training, difficult children), or otherwise attributes them to senseless acts of outliers in an otherwise reasonable regime (special reference was made to Zamolo and Kelleher in the *Final Report*, for instance). The manner in which the Royal Commission conducted its inquiry presumes that the violence experienced by young people could be reasonably explained. For instance, Commissioner White allowed the aggressive cross-examination of Dylan Voller by the NT government on the grounds that it would provide 'the context in which the Youth Justice Officers and the system and the school teachers were attempting to manage this young man'.¹⁹⁷ She sought to 'understand' and rationalise the response of detention officers, and in doing so underlined the 'micro-solidarities' of institutional power and discourse among corrections, the judiciary and the Commission itself.¹⁹⁸

The Royal Commission's *Final Report* characterises the use of force in detention as 'punitive',¹⁹⁹ which implies that the attacks it documents were perpetrated in response to the children's own

194 Anderson, 'Transcript', pp. 157, 155.

195 Bauman, 'The Work Ethic', p. 71.

196 Royal Commission, 'Findings and Recommendations', *Final Report*, pp. 1–22.

197 M. White, 'Public Hearing Transcript', *Royal Commission: Transcripts*, 20 April 2017, p. 2641. See also references by the commissioner to the problems of 'managing some quite difficult behaviours' of young people in M. White, 'Public Hearing Transcript', *Royal Commission: Transcripts*, 26 April 2017, p. 2950; M. White, 'Public Hearing Transcript', *Royal Commission: Transcripts*, 8 May 2017, p. 3465.

198 E. Blue, 'Seeing Ms. Dhu: Inquest, Conquest, and (In)Visibility in Black Women's Deaths in Custody', *Settler Colonial Studies*, vol. 7, no. 3, 2017, p. 300.

199 Royal Commission, 'Findings and Recommendations', *Final Report*, pp. 7–8, 17. See also Royal Commission, *Interim Report*, p. 3.

behaviour. Although the Final Report of the Royal Commission is critical of the abuses it evidences, implying the need for a greater emphasis on therapeutic responses, it nonetheless places the focus on the children's behaviours rather than the violent culture among detention managers and guards. In this way, the Royal Commission has reinforced rather than challenged the rhetoric of the NT Intervention: that the state is ultimately benevolent, and that Aboriginal people are a problem to be 'fixed'. The Royal Commission is focused on setting down better state responses, rather than listening to Aboriginal communities about their needs and strengths in relation to safety. This characterisation of the protective role of the state in relation to Aboriginal children precludes state accountability. Exposing the wrongs and racism of the state would force us to question the state's responsibility for redress and whether sending children to detention per se is appropriate. Such observations, findings and ensuing recommendations are absent from the Royal Commission's *Final Report*. Bauman forces us to ask these questions about detention because he recognises that the exclusion of the 'othered' is the tipping point for cruel and inhumane practices.²⁰⁰

Bauman's concern is to expose the explanations of deviant, disorderly and abnormal behaviours as the language of a system that is intent on excluding the marginalised. This language was well rehearsed by NT ministers, corrections managers, detention officers and allied workers before the Royal Commission. This was also the language of the federal government in the lead-up to the 2007 NT Intervention. The collective characterisation of Aboriginal children and communities as 'disordered' neglects their humanity and strengths. It enables harm and trauma to be presented as objectively necessary and even moral.²⁰¹ The moral righteousness of the state, alongside its moral denigration of Aboriginal people and children, needs to be interrogated and challenged. It is not enough to simply inquire into the state practices that flow from such ideologies.²⁰² In focusing on those practices alone, the Royal Commission was blinkered from seeing and exposing the underlying issue of Aboriginal children and their communities being classed by the state as surplus to human requirements across the Northern Territory and, at least by implication, across Australia.

200 Bauman, 'The Work Ethic', p. 60.

201 Bauman, 'The Work Ethic', p. 72.

202 See Bauman, 'The Work Ethic', p. 72.

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